

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF TENNESSEE**

MICHAEL Q., BY AND THROUGH HIS PARENTS,)	
JENNIFER Q., AND NATHAN Q.,)	
)	
PLAINTIFFS.)	
)	
VS.)	No . _____
)	
KNOX COUNTY, TENNESSEE &)	
KNOX COUNTY BOARD OF EDUCATION,)	
D/B/A/ KNOX COUNTY SCHOOLS)	
)	
DEFENDANT.)	

COMPLAINT FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

COME THE PLAINTIFFS, Michael Q., through his parents, Jennifer Q. and Nathan Q., by and through their attorneys, filing this Complaint for attorneys' fees and litigation expenses. They show:

I. PARTIES AND JURISDICTION

1. Michael Q., a six-year-old minor child, resides with his parents, Jennifer Q. and Nathan Q., in Knoxville, Tennessee.

2. Knox County, Tennessee and Knox County Board of Education d/b/a/ Knox County Schools, the Defendant, is vested with control and operations of the public school system within Knox County, Tennessee. They may be served with process through their Mayor, Glenn

Jacobs, City County Building, Suite 615, 400 Main Street, Knoxville, TN 37902 and their Superintendent, Bob Thomas, at Knox County Schools, 912 S. Gay Street, Knoxville, TN 37092.

3. Knox County receives state and federal funding to provide special education to persons with a disability, like Michael Q., under the IDEA, Section 504, and Title II of the ADA.

4. This action arises out of the following Federal statutes: the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq.*, and §1415(i)(3)(B), the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336, 104 Stat. 327 (1990), 42 U.S.C. §§ 12101, *et seq.*, amended by the Americans with Disabilities Act (ADA-AA) with an effective date of January 1, 2009; the Rehabilitation Act of 1973, §§ 504 and 505, as amended, 29 U.S.C.A. §§ 794 and 794a, including the conforming amendment of the ADA-AA which changes the definition of “disability” under § 504 to conform to the definition of “disability” under ADA-AA. The Court’s jurisdiction is invoked pursuant to 28 U.S.C. §1331.

5. Michael Q. is covered by the IDEA, 20 U.S.C. §§ 1400 *et seq.*, the ADA, 42 U.S.C. §§ 12131 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. He has an Individualized Education Program (IEP) providing him “special education,” due to disabilities that include autism. This disability entitles Michael Q. to services under the IDEA. Michael Q.’s impairment also substantially limits Michael Q. in the major life activities of learning, daily living skills, socialization, and communicating (receptive: attention and listening; and communicative: responding as Michael Q. is largely non-verbal).

II. FACTS

6. Plaintiffs and Defendant were parties to an administrative due process hearing under the IDEA, Section 504, and ADA—from December 16-18, 2020—involving the issue of

Michael Q.'s "least restrictive environment" (most integrated setting). This hearing concluded with a Final Order from Administrative Law Judge Philip R. Hilliard entered February 24, 2020. (Final Order attached hereto as **Exhibit A**). A copy of the Final Order is attached hereto, and those findings are incorporated and made a part of this filing herein.

7. In the Final Order, Judge Hilliard found that Knox County's proposed placement of Michael Q. (including 4.75 hours of academic instruction time each day away from Michael Q.'s regular education classroom) violated his right to be educated in his "least restrictive environment" under the IDEA. Plaintiffs (*Petitioners* at the due process hearing) were the prevailing party. (Ex. A, p. 28).

8. For a remedy, Judge Hilliard ordered Michael Q.'s IEP team to develop an Individual Education Plan (IEP) that places Michael Q. in the regular education classroom with a paraprofessional trained in serving children with autism, to be supported by Knox County's Autism Support team. Further, Judge Hilliard ordered that Michael Q. is entitled to an evaluation for an assistive and augmentative communication device (AAC) upon which Michael Q.'s teachers and support personnel shall be trained. (*Id.*).

9. Administrative law judges do not have authority to award attorneys' fees and costs (monetary relief) under IDEA. For those, Plaintiffs must now file this action under IDEA, Section 504 and the ADA.¹

¹ Because Michael Q.'s least restrictive environment and most integrated setting claims under Section 504 and Title II of the ADA, respectively, did not seek relief different from the IDEA, Judge Hilliard found they were "*pretermitted*" based on the comprehensive IDEA findings and relief awarded. (*Id.* at p. 3). Therefore, appeal is sought on expert fees and costs.

III. RELIEF SOUGHT:

ATTORNEYS' FEES AND COSTS

10. The foregoing paragraphs and Final Order (Ex. A) are incorporated.

11. Plaintiffs seek their costs and reasonable attorneys' fees, including attorneys' fees of Justin S. Gilbert and Jessica F. Salonus, expert witness costs, and any other recoverable costs under IDEA, Section 504, and the ADA. 20 U.S.C. §1415(i)(3)(B); 29 U.S.C. §794a(b); 42 U.S.C. §12205; and 42 U.S.C. §1988.

12. Plaintiffs request a Court-ordered schedule with a hearing date or briefing date for submission of the dollar amounts of the fees and costs, along with any supporting documentation/testimony (in the event stipulation of attorneys' fees and costs is not possible). In the event the parties are not able to stipulate to the amount of attorneys' fees and costs, Plaintiffs intend to seek the additional fees and costs that will be incurred in this action once the final amount is known.

Respectfully Submitted,

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